

Bil Anifeiliaid Gwyllt a Sycrasau (Cymru) | Wild Animals and Circuses (Wales) Bill  
WA 10

**Ymateb gan** : Ron Beadle, Athro Trefniadaeth a Moeseg Busnes, Prifysgol  
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**Re:** Consultation on Wild Animals in Circus (Wales) Bill

**1. Introduction**

1.1 This is a response to the invitation by the Committee for a Written Submission on the Bill. Specifically this response relates to its first of the Term of Reference:

*the general principles of the Wild Animals and Circuses (Wales) Bill and whether there is a need for legislation to deliver the Bill's stated policy objective*

1.2 The 'general principle' of the Bill is not an animal welfare measure but rather proceeds under the competence granted by the Wales Act 2017 under which the National Assembly of Wales has the power to act on 'ethical' grounds (Section 2.2. of the Explanatory Memorandum<sup>i</sup>). I will first address the grounds of the Bill before turning to the question of ethical justification as such and then the justification for the Bill, as argued in the Explanatory Memorandum, before concluding.

1.3 I am writing as a Professor of Organisational and Business Ethics whose empirical research concentrates on the travelling circus. Examples include a 2017-19 research project funded by the British Academy/Leverhulme Trust for a study on the career choices of circus performers and previous studies have been published in academic journals including 'The Journal of Business Ethics'. I co-convene the 'Circus Research Network' (Britain and Ireland) and am a Visiting Professor at the National Centre for Circus Arts.

**2. The General Principles of the Bill**

2.1 The Explanatory Memorandum states that the Bill aims to:

*makes it an offence for a wild animal to be used in a travelling circus. A wild animal is used if the animal performs or is exhibited. The Bill will not affect the use of domesticated animals in circuses, nor will it prevent wild animals being used for entertainment in other settings<sup>ii</sup>*

2.2 Since the Bill is proposed under powers relating to 'ethics', its justification requires that ethical grounds be identified to warrant a ban on the performance of a/wild but not domesticated animals and b/ wild animals in travelling but not in other (that is, static) settings.

2.3 This proposition will be considered in light of what is required for propositions to be justified on the grounds of ethics.

### **3. Ethics as Justification**

3.1 Ethics understood as the systemisation of ideas about proper conduct, right and wrong, good and evil, operates at a number of levels in human action. It manifests in emotional responses, ongoing preferences and it animates civil and political action. Critically for present purposes, it provides resources for justifying decisions and when used in this way it can be understood as a particular type of decision-making practice with its own history, norms and requirements that are equivalent to but operate in a different domain from other decision-making processes from rules of logic to cost-benefit analysis, smart systems and many others. The implication of this is that when one claims 'an ethical basis' for anything whatsoever, one must observe the relevant norms and requirements just as one must observe relevant routines in conducting an investment appraisal.

3.2 In all of these cases, the history of the practice is one in which challenge to existing norms and the development of new norms is a regular occurrence. However, for new norms to displace old requires that an account can be given for why the use of this or that system is understood as preferable to those of its predecessors. The result is that for practices involving decision-making (sciences, arts, games and so on) one can provide a narrative account both of the development of such norms and of the conceptualizations of their goods and purposes in light of which a new approach, a new technology, a new understanding of relevant questions and so on, has displaced its predecessors. At the same time one can also determine the boundary conditions within which such fields of endeavour exist and indeed, must exist for the type of ongoing practice and dialogue to be meaningful. Certain presupposition must be shared between practitioners and decision-makers in each and every domain for such practices to be intelligible.

3.3 It is important then to know what the norms and requirements are for specifically 'ethical' action justification. If an action justification falls outside the relevant norms and requirements, then we can only conclude that the action is not intelligible in its own terms. This is what I am going to argue to be the case in respect of the Wild Animals in Circus (Wales) Bill.

3.4 What then are the norms and requirements for ethical justification? One shared feature of all systems of ethical justification is that they be generic. What this means is that from the first annotation of systematic ethical rules in religious texts up to and including classical sources in ethics, the scholastic medieval tradition and post-enlightenment deontological and utilitarian traditions that inform such contemporary notions as rights

and welfare; every ethical system has sought general, and most often universal, application. It is this presupposition that informs so much of the taken-for-granted assumptions of liberal societies such as the self-defeating nature of hypocrisy, the rejection of retrospective legislation, opposition to arbitrary judgment and so on.

- 3.5 In order to claim that either a rule, such as the prohibition of murder or a utilitarian calculus such as is used to determine the introduction of new medical treatments, is 'ethical', one must also claim that this prohibition or this procedure applies to all relevant cases. For the most influential post-Enlightenment ethicists, Kant and Jeremy Bentham, this has meant – in all cases. Indeed, a centrepiece of Kant's ethics is that the only ethical rules are those that are both universal and binding. By universal, we mean that whole, relevant categories are treated in the same way.
- 3.6 The Animal Rights movement is a contemporary example of this. Seminal to this movement is Peter Singer's text 'Animal Liberation' (Harper Collins: 1975), which has proven both highly durable and influential. Singer combines a utilitarian commitment to weighing harms and benefits with an understanding of human and non-human animals that experience pleasure and pain as having equivalent moral status. In other words, he expands the universality of the utilitarian calculus to all sentient creatures. This is a book of ethics in part because of the universality of its claims. Those who concur with Singer's premises should and often do then commit themselves to veganism, to not keeping pets, to not wearing or otherwise using animal products and so on. They do so consistently because they are acting on a binding moral rule.
- 3.7 Such is the nature of ethical discourse and practice; ethics must be universal or it ceases to be ethics. Even those post-modernists who have critiqued Enlightenment ethics, of whom Jacques Derrida is probably the most note-worthy, have created their own universality condition for their understanding of ethics – in Derrida's case the category of the ethical only comes in to play in the face of dilemmas so intractable that moral rules cannot guide us. Derrida's reasoning of course differs markedly from Singer's and Kant's but all are ethicists in that all are engaged in locating generic conditions in which rules or procedures must be consistently applied.
- 3.8 The conclusion to be drawn from this all too brief introduction is that to claim that some decision, some result of reasoning, and indeed some piece of legislation, has an 'ethical' basis, is to claim that its exercise should have universal application. Having established grounds for this argument I turn next to the distinction between the ethical bases claimed for the Bill.

#### **4.0 The 'Ethical' Justification for the Bill**

- 4.1 The claim that the basis for the Bill is 'ethical' rather than on 'animal welfare' grounds is relatively straightforward to understand because there are insufficient animal welfare grounds to provide warrant for prohibition. This conclusion is discussed in Paragraphs 3.15 to 3.30 of the Explanatory Memorandum. The two leading sources for this conclusion are the 2007 Radford Report "Wild Animals in Travelling Circuses: The Report

of the Chairman of the Circus Working Group” conducted for DEFRA<sup>iii</sup> and the 1990 Report for the RSPCA by Dr Martha Kyle-Worthington.<sup>iv</sup>

4.2 The former concluded that “there appears to be little evidence to demonstrate that the welfare of animals kept in travelling circuses is any better or worse than that of animals kept in other captive environments.” The latter concluded that “the welfare of the animals in British circuses, as judged by physical and psychological criteria, is not as a rule inferior to that of other animal husbandry systems such as in zoos, private stables and kennels.”

4.3 Four types of problem have attended the ‘welfare’ case for prohibition. First, there is a sparsity of evidence that circus performance undermines animal welfare— as highlighted in the Radcliffe and Kyle-Worthington reports. Second, the evidence from primary research points to circus animals successfully engaging in the type of activities that indicate flourishing – crucially including breeding and an extended lifespan. Dr Ted Friend highlighted this in his recent letter to the Minister for Environment, Energy and Rural Affairs, Lesley Griffiths AM, in respect of the ‘misrepresentation’ of his research by the Harris Review<sup>v</sup>. Third, the conceptualization of welfare is itself contested, not least by Kyle-Worthington. Fourth, if welfare were to be the criterion for animal protection then other activities such as horse-racing in which over 100 horses die annually in the UK and Ireland, including four at Chepstow this year<sup>vi</sup>, provide far stronger cases for legislating on welfare grounds.

4.4 The question then, is whether there are ethical grounds beyond welfare that provide warrant for the Bill.

4.5 The Explanatory Note makes the following five arguments in Sections 3.31 to 3.34 (3.3.5 is the conclusion to proceed with legislation) for the ethical justification of the Bill:

“3.3.1 There was a time when attending a circus would have been the only opportunity most people had to see exotic wild animals. That is no longer the case, and circuses have been superseded by modern, well managed zoos where maintaining the highest standard of animal welfare is a priority. Zoos licensed under the Zoo Licensing Act 1981 are required to undertake conservation measures and to promote public education and awareness in relation to conservation, particularly by providing information about the species exhibited and their natural habitats. The same is not required of circuses and it is questionable if such requirements could ever be met in a circus environment. In addition to the opportunities to see wild animals in zoos, world class wildlife documentaries are engendering an increased respect for the intrinsic value of wild animals in their natural environments.

3.32 The use of wild animals in travelling circuses raises concerns around animal dignity. It is increasingly difficult to justify keeping wild animals in travelling circuses and requiring them to perform tricks.

3.33 There is a strong body of opinion that the welfare needs of wild animals in travelling circuses cannot be met. Whilst there may not be conclusive evidence that welfare is

compromised to a greater extent in travelling circuses than in any other ‘artificial’ environment, the Welsh public and third sector organisations have overwhelmingly lobbied for this practise to be banned.

3.34 Given the small and declining number of animals involved, it is possible that over time travelling circuses will choose to no longer use wild animals. However, this is not guaranteed, and a ban will send a clear message that the people of Wales believe this practice to be outdated and ethically unacceptable.”

I shall address each argument in turn:

- 4.6 Paragraph 3.3.1 presupposes that ethical judgments should be made on utilitarian grounds – that is, in light of their consequences for (in this paragraph, human) welfare. Using this as a premise it allows that there was a time in which the gains from the experience of witnessing wild animals outweighed disadvantages. Now however such benefits can be achieved through attending zoos or watching wild animals through other media.
  - 4.6.1 First, should we assume that the ethical presupposition, the empirical assertions and the welfare calculations are correct, then the conclusion provides grounds for banning static as well as travelling circuses – the exemption for static exhibition is unjustifiable. If the grounds for the Bill are indeed those of ethics, then all forms of wild animal display – including falconry, Christmas reindeer and others, should fall under the terms of the ban<sup>vii</sup>.
  - 4.6.2 Second, the proposition that an activity *should be prohibited* when either its welfare disbenefits outweigh its benefits, or when alternatives exist that better achieves its benefits (as is claimed here), is inimical to human rights and liberal democracy. There are countless examples of activities about which conventional opinion agrees that disbenefits outweigh benefits and which are not prohibited; such activities are often regulated and taxed, and engagement in them limited to adults – but they are not banned.
  - 4.6.3 Third, nowhere in the Explanatory Memorandum does the utilitarian calculation consider the impact of the ban on circus as a community. My own research has evidenced that the relationship between human and non-human animals is pivotal to the self-understanding of circus people and the ban therefore ends, not the life of the circus community, but a critical feature of its identity. Traveller communities have been the victims of static communities down the centuries and this Bill, which allows the presentation of wild animals in static environments but not their exhibition by a traveller community, should be seen as another example of such injustice.
- 4.7 Paragraph 3.3.2 holds that animal dignity is undermined by ‘requiring animals to perform tricks’.

- 4.7.1 First, if this presupposition is accepted then the distinction between wild and domesticated animals is ethically irrelevant for animal dignity as such is presumed to be so undermined when required to undertake tricks<sup>viii</sup>.
- 4.7.2 Second, the critique in relation to animal dignity, if accepted, applies to all circumstances in which animals are required to perform tricks and would therefore include the training displays of sea lions at Colwyn Bay Zoo, the South Wales Association Kennel Association Championship Dog Show in Powys in October and Powys would also lose its Falconry Experience Days. This is to say nothing of any dog owner whose pet is taught to roll over. The case for the distinctiveness of 'travelling circus' such that it requires different treatment from such activities, including static circuses, is simply not argued, let alone established, in the Explanatory Memorandum.
- 4.8. Paragraph 3.3.3 admits that the welfare argument is insufficient to warrant a ban and asserts that Welsh opinion and third sector organisations favour it.
- 4.8.1. The conjoining of these two observations does not constitute an *ethical* justification. On the assumption however that the ethical argument presupposed here is something along the lines that the will of the people should normally be observed, then all sorts of conundrums are raised. These include such matters as the relationship between representative and plebiscitary notions of democracy, the relationship between majority views and minority rights, and the evidence base that supports this claim. As section 4.1.4 of the Explanatory memorandum suggests, the results of the Government's consultation (the majority of whose responses were enabled by a notable Animal Rights organisation): "can only be regarded as being representative of the views of those people and groups who were sufficiently interested in the issue to respond to the consultation and are not necessarily representative of the views of the wider general public." 0.002% of the Welsh population responded to the consultation<sup>ix</sup>.
- 4.9 Paragraph 3.3.4 argues that a ban is justified, regardless of the evident decline almost to the point of elimination of circuses with wild animals, to "send a clear message that the people of Wales believe this practice to be outdated and ethically unacceptable".
- 4.9.1 First, this paragraph does not provide an ethical justification for its 'message', it simply states an implication of the legislation once passed.
- 4.9.2 Second, if the presupposition of 3.3.3 is correct, that the majority of Welsh people already believe wild animals in circus to be "outdated and ethically unacceptable", then one can only wonder as to who the supposed recipients of this message are. If the recipients are the circus artistes whose livelihoods, skills and traditions are to be lost as a result of this ban then 'the message' will certainly be effective, but effectiveness and justification are quite separate concepts.
- 4.9.3 Third, 'the message' of the Bill is that the performance of animals is outdated and ethically unacceptable' unless it takes place in a static environment or involves 'domesticated' animals. Why wild animal performance is considered up to date and

ethically acceptable in static venues, or why the ‘domesticated/wild’ distinction is pertinent, is nowhere argued<sup>x</sup>.

## 5.0 Conclusion

- 5.1 This response to consultation argues that (1) that any proposition claiming to be ethical must be generic in scope (2) that this Bill is not generic in this way because (3) the Bill provides no sound ethical arguments for the ban on wild animals in circus that do not apply equally to all forms of human manipulation of animals. The Bill proposes not a ban on the use of animals but only of wild animals, and not a ban on their exhibition in static circuses (were such to exist) but only when they are transported.
- 5.2 Liberal democratic societies, which adhere to human rights norms, do so on the basis of an ethical tradition that limits the rights of governments and majorities to impose their will on fellow citizens. Prohibition of activities and criminalisation of their participants normally and rightly applies only to practices with significant and far reaching effects which are overwhelming in the damage they inflict on citizens. As a result societies have not banned such harmful activities as smoking tobacco, drinking alcohol, participating in dangerous sports, horse racing and so on.
- 5.3 The question the Committee should ask itself is whether the presentation of wild animals in travelling circuses has such significant, far reaching and overwhelmingly negative effects as to warrant prohibition and thus breach an ethical principle, that of the liberty of the citizen, which is and must be universal. Many people find animal acts in circus distasteful although it is notable the number of respondents to consultations is dwarfed by the numbers attending animal circuses each year<sup>xi</sup>.
- 5.4 There is a contested ethical argument for banning all manipulation of non-human by human animals but the consensus of the social order we inhabit is that the manipulation of non-human by human animals is allowable so long as animal welfare is protected and this Bill is not presented on Animal Welfare grounds.
- 5.5 In short, no sound ethical basis for the prohibition of a/wild but not domesticated animals and b/ wild animals in travelling but not in other (that is, static) settings, has been provided in the Explanatory Memorandum that seeks to justify the Bill.

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<sup>i</sup> Available at <http://www.assembly.wales/laid%20documents/pri-ld12632-em/pri-ld12632-em-e.pdf>

<sup>ii</sup> *Ibid.*

<sup>iii</sup> Available at:

<https://webarchive.nationalarchives.gov.uk/20110318164910/http://www.defra.gov.uk/foodfarm/farmanimal/welfare/documents/circus-report.pdf>

<sup>iv</sup> Available at: [http://the-shg.org/Kiley\\_Worthington/index.htm#contents](http://the-shg.org/Kiley_Worthington/index.htm#contents)

<sup>v</sup> Described in <https://www.telegraph.co.uk/news/2018/08/11/foxhunting-prosecution-professor-misrepresented-science> A longer letter detailing these points was written to the Italian Senate and can be found here:: <http://www.sivelp.it/wp-content/uploads/2017/07/TED-FRIEND-PDF.pdf> . It is notable the Dr Friend’s status as a respected animal researcher went unremarked when he was cited in the Consultation Summary (p12 and 13): <https://gov.wales/sites/default/files/consultations/2019-01/wild-animals-in-travelling-circuses-summary-of-responses.pdf>

<sup>vi</sup> <http://www.horsedeathwatch.com/#c=55&j=&g=&sd=&ed=&p=1>

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<sup>vii</sup> As it happens, I accept neither the presupposition nor the calculation. Indeed the responses to the consultation <https://gov.wales/sites/default/files/consultations/2019-01/wild-animals-in-travelling-circuses-summary-of-responses.pdf> included people who specifically attested to the rarity of an opportunity “to see such majestic animals up close” (p 9).

<sup>viii</sup> A point made in response to the consultation by those seeking a total ban on the use of animals such as Freedom for Animals, (ibid. p.20)

<sup>ix</sup> There is in fact no guarantee that respondents came from Wales

<sup>x</sup> A point made by some respondents to the Consultation (ibid. p19)

<sup>xi</sup> Personal Correspondence with the Association of Circus Proprietors; they estimate around 325,000 people attended animal circuses across the UK in 2018.